
In the Matter of the Claim of

ANTHONY MILLER,

Claimant,

v.

CITY OF ROCHESTER,

Respondent.

Remote 50-h Hearing in the Above-Titled Matter:

Sworn Testimony of:

Anthony Derrick Miller

Date: May 26, 2021

Time: 10:00 a.m.

Reported By: TAMMY B. FIGLER

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* * *



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1 ANTHONY DERRICK MILLER - BY MR. BEATH

2 WEDNESDAY, MAY 26, 2021;

3 (Proceedings in the above-titled matter
4 commencing at 10:00 a.m.)

5 * * *

6 ANTHONY DERRICK MILLER,

7 called herein as a witness, first being sworn,
8 testified as follows:

9 EXAMINATION BY MR. BEATH:

10 Q. Good morning, Mr. Miller. My name is
11 Patrick Beath. I'm an attorney for the City of
12 Rochester, and we're here today to take what's called
13 your 50-h Examination about the claim that you filed
14 against the city.

15 You understand that is the purpose for our
16 meeting today?

17 A. Yes.

18 Q. Before we get to the examination proper
19 where I ask you questions and you give me answers
20 about the incident, I'm going to review with you some
21 of the rules of the 50-h Examination.

22 Do you understand?

23 A. Okay.

24 Q. The first and most important rule is that
25 everything that we're saying today is being taken down



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2 Q. Can you give me a description of that
3 officer?

4 A. Not that good. Back then, you know, slick
5 hair, oily hair, something like that. Heavyset. Not
6 heavyset but, you know, built.

7 Q. White guy?

8 A. Yes.

9 Q. Do you remember height?

10 A. No.

11 Q. Do you know if he was shorter or taller
12 than you?

13 A. He was taller than me.

14 Q. How tall are you?

15 A. 5'5".

16 Q. So you said that he grabbed Aaron and
17 started searching him.

18 Can you describe in a little more detail
19 what you saw him doing to Aaron?

20 A. He was, you know, searching his pockets,
21 patting around him, you know.

22 Q. Did he say anything, this officer, to
23 either you or to Aaron?

24 A. He just told us don't move, and you
25 know...



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2 Q. And he was the only officer in that car
3 from what you could see?

4 A. Yes.

5 Q. What were you doing as this Officer Hoag
6 was searching Aaron?

7 A. I had my hands in the air. He told me to
8 put my hands up, show my hands.

9 Q. Do you remember him saying show me your
10 hands? Do you remember him saying put your hands up,
11 or both?

12 A. Something to that. "Let me see your
13 hands."

14 Q. Did you have your phone in your hand at
15 that time or was your phone elsewhere?

16 A. It was in my pocket.

17 Q. Apart from the phone, your phone, did you
18 have anything else with you when you left Birr to head
19 over to Bradburn?

20 A. My MP3 player. That's it. That's what I
21 can recall.

22 Q. And when you say "MP3 player," do you know
23 what kind it was? Was it an iPod? Was it something
24 else?

25 A. No. It wasn't no iPod. It was a cheap



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2 residence and asked to turn left or right, was Aaron
3 still sitting in the car?

4 A. I believe so. He wasn't in my sight, but
5 I'm assuming he still was there.

6 Q. What happened after you went and turned
7 left and turned right as the officers instructed you?
8 What's the next thing that happened?

9 A. They took me back to the car.

10 Q. Were you in handcuffs at that point?

11 A. No.

12 Q. What happened after you got back to the
13 car?

14 A. I asked was I free to leave now? And I
15 know for certain I was talking to Officer Watson at
16 this point.

17 He told me they were trying to get one
18 more victim to participate in the identification
19 procedure, and that the first person didn't identify
20 me, so they was holding me to see if the second person
21 would identify me.

22 Q. And so did you remain or go back inside
23 the police car?

24 A. Yes.

25 Q. And what's the next thing that happened



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2 with you?

3 A. As time was going by, a lot of time went
4 by, I'd say, and I began knocking on the window and
5 asking, "What's going on? What is the holdup, because
6 you said I'm not identified, so why am I still in the
7 car?"

8 That's when they told me they was waiting
9 for the second victim to arrive at the scene. And,
10 once again, I'm waiting longer. I knock on the window
11 again. Ask, "What's going on?"

12 And they say, "Oh. Matter of fact, you
13 know, Wengert wanted to take you down to PSB. He got
14 a couple questions for you."

15 And shortly after that I was placed in
16 handcuffs and put me in another car.

17 Q. During the time that you were waiting, did
18 you see what if anything was happening with Aaron and
19 the car that he was in?

20 A. I know his door opened again, and Wengert
21 and another officer, who was wearing a suit, was
22 talking to him. So two officers out of uniform was
23 talking to Aaron at that point.

24 Q. Do you know who the other officer was in a
25 suit?



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2 A. No, but I'm assuming he was, you know, an
3 investigator or something to that nature.

4 Q. Did you have any idea -- well, did you
5 hear at all what that conversation with Aaron was?

6 A. No.

7 Q. And at any point since then have you
8 learned what they spoke to Aaron about?

9 A. No, not at that point.

10 Q. What about as of today, have you learned
11 what they spoke to him about?

12 A. No. I never knew what took place during
13 that conversation when we still was on Roslyn Street.

14 Yes, I got discovery what took part later
15 on during the conversations, but I don't know what was
16 discussed at that moment.

17 Q. So you were told that Wengert had some
18 questions for you. Were you taken to PSB?

19 A. Yes.

20 Q. And you said it was at that point before
21 they drove you to the Public Safety Building that you
22 were placed in handcuffs?

23 A. Yes.

24 Q. Did the officers drive you directly to the
25 PSB at that point or did you stop anywhere else?



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2 A. We drove directly to PSB.

3 Q. What happened after you got to PSB?

4 A. I believe I asked again -- well, no. I
5 asked, "Why am I being taken to PSB," and, "Why am I
6 in handcuffs," and they told me it was for
7 precautions.

8 Q. Who told you that?

9 A. I believe it was Hoag or -- I believe it
10 was Hoag. I believe I was with Hoag at that time.

11 Q. Did that conversation take place in the
12 car as you were heading to PSB?

13 A. I believe so.

14 Q. So it's your recollection that Hoag is the
15 one that took you to PSB?

16 A. Yes, I believe so.

17 Q. Was it just you and Hoag in the car?

18 A. I don't recall, because I know once we got
19 to PSB, another officer was there also shadowing me,
20 so I don't recall, but we did end up having two
21 officers present when we was at PSB.

22 Q. What do you mean, "shadowing me"?

23 A. Literally, Hoag was on one side and
24 another officer was on another side of me.

25 Q. Okay. So what happened after you got to



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2 PSB?

3 A. I sat -- well, they called me in and put
4 me in a room and said they was waiting on Wengert.

5 Q. Was anyone else in the room with you at
6 that point?

7 A. No.

8 Q. Were you still in handcuffs then?

9 A. I believe so, yes.

10 Q. What's the next thing that happened?

11 A. I just sat there and waited for Wengert to
12 arrive.

13 Q. Do you have an idea of how long you
14 waited?

15 A. It was quite a while, but I can't give you
16 an exact time.

17 Q. And did Wengert eventually arrive?

18 A. Yes.

19 Q. What happened after he arrived?

20 A. He just sat down and informed me that I
21 was identified by two people.

22 Q. Okay. Identified. Did he say anything
23 else?

24 A. He said two people accused me of pointing
25 a gun at them and taking their property.



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2 Q. And was there any further conversation
3 between you and Wengert?

4 A. I just explained to him, you know, my
5 alibi, the reason I was present over on Bradburn and,
6 you know, I offered him a phone, you know, to confirm,
7 you know, that I wasn't present on Roslyn. But, you
8 know, he didn't care too much about that.

9 Q. What do you mean when you say "he didn't
10 care too much about that"?

11 A. Well, the things that I was telling him
12 that would exonerate me, he literally say he checked
13 my cell phone and, you know, he said, "Fuck your cell
14 phone. Have your lawyer investigate that." Although
15 he took my phone out of the room, and I am assuming he
16 looked at it and did his investigation. But like I
17 say, he said, "Fuck your cell phone. Have your lawyer
18 investigate it."

19 Q. So at that point did you have your cell
20 phone and MP3 player back or had police hung onto
21 that?

22 A. I believe the police hung onto it.

23 Q. Okay. So you had this conversation with
24 Wengert, and you encouraged him to check your phone.

25 Did you say that he did check your phone?



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2 A. I'm assuming he did. He left the room
3 after I requested that. Then he came back and he told
4 me, you know, "F your phone. Have your lawyer
5 investigate it."

6 Q. Okay. Before Wengert started talking to
7 you about the -- about the robbery, did he ask your
8 permission to talk about the robbery?

9 A. Yes.

10 Q. Can you tell me what that conversation
11 was?

12 A. About asking me permission?

13 Q. Yes.

14 A. I don't know. He just asked my name,
15 furthest level education I completed, do I speak
16 English, and am I willing to speak to him about what's
17 going on.

18 Q. And you agreed to speak with him?

19 A. Of course.

20 Q. Did he have you sign anything indicating
21 that you agreed to speak with him?

22 A. I don't recall. I'm not sure.

23 Q. You've told me about some of the
24 conversations that you had with Wengert about your
25 phone, and about Wengert telling you that you'd been



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2 Q. Yeah. Patio Solutions.

3 Are you working for them directly or is
4 that a temp job?

5 A. Directly.

6 Q. And does that job provide any kind of
7 health insurance, medical coverage?

8 A. Yes, after 90 days.

9 Q. Okay. And you said you've been working
10 there for how long now?

11 A. About three weeks -- two, three weeks.

12 Q. Got it. Have you suffered any financial
13 injuries as a result of your arrest and incarceration
14 that's at issue in this suit?

15 A. I'm assuming I'd have been grossing income
16 if I was never incarcerated.

17 Q. Do you know from, let's take the year
18 before you were incarcerated, for instance. Do you
19 know how much money you made that year?

20 A. No, I don't recall.

21 Q. Okay. Do you know an approximate amount?

22 A. No. I couldn't tell you to be honest.

23 Q. Do you know how much money you've, you
24 know, you've earned from when you got out in November
25 of last year until now?



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2 A. Well, I literally just started working
3 three weeks ago. So like I make \$18.50 an hour, and I
4 average between 42 to 50 hours a week. So...

5 Q. Does Patio Solutions, do they operate --
6 are they a seasonal company, so mostly like spring,
7 summer, fall?

8 A. All seasons.

9 Q. Great. How about any legal fees? Have
10 you had to pay any legal fees connected to your arrest
11 and incarceration?

12 A. No. Just the bond. That's just to be
13 bonded out. That's it.

14 Q. Did your family get that money back?

15 A. No.

16 Q. Okay. Was that your money, or was that
17 your family's money?

18 A. My family's money.

19 Q. Have you been injured as a result of the
20 incident alleged in your claim in any manner that we
21 have not already discussed?

22 A. Like I said, just mental.

23 Q. Okay. And we talked through some of the
24 mental injuries.

25 Is there anything on the mental front that



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2 we have not talked about?

3 A. To be honest, I'd be lying if I told you
4 it seems like I find out every week, you know, take
5 every week that I find out something. I can't just
6 give you, you know, no list. Seems like there's
7 something appearing every week that is associated with
8 it -- prison.

9 Q. Give me some examples from like the last
10 couple of weeks. What else that we have not
11 discussed. Anything?

12 A. It could be even just when I'm like, you
13 know, I'm spending time with loved ones. You know,
14 I'm just extra vigilant and, you know, just cautious.
15 You know, just law enforcement and, you know, steady,
16 you know, looking over my shoulder, in my rearview.
17 So it's just moments, you know, that I have that, you
18 know, is a flashback even. You know, just dreaming
19 about prison, you know, waking up in the middle of the
20 night in a puddle. You know, you have a flashback of
21 prison.

22 Q. Okay. Got it.

23 Great. Unless there's anything else that
24 you think I should know, I think I'm all set.

25 A. Well, like to be honest, nobody been



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2 listening for the last eight years when I say this,
3 but, you know, I believe wholeheartedly that my
4 conviction is because of Investigator Wengert.

5 You know, I'm not sure what he was going
6 through at the time, but, you know, I believe he was
7 on drugs at the time, you know. And it's what other
8 people believe also, was he ultimately passed away due
9 to drugs, illegal narcotics.

10 So, you know, that's just something I hope
11 won't fall on deaf ears. I'm quite sure I'm not the
12 only victim of him.

13 Q. Do you believe that Investigator Wengert
14 was on drugs at the time of your presentation?

15 A. Yes, I believe so. You know, it's sad to
16 say, you know, I dealt with and conversed and, you
17 know, dealt with people on drugs before. And he
18 exhibited every sign of being someone under the
19 influence at that time.

20 Q. What signs did you see him exhibit that he
21 was under the influence?

22 A. Like I said, glossy eyes. Just even the
23 mannerisms. The way he was talking. Like he just
24 didn't seem right.

25 And I dealt with this guy on previous



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2 occasions, so I'm not unfamiliar with him. I'm very
3 familiar with him.

4 So like I say, just the glossy eyes, just
5 repeating himself, and just seeming lost at times.

6 Q. When in your interactions with him did you
7 observe that he had glossy eyes?

8 A. When we sat down at PSB.

9 Q. Any other occasions that you interacted
10 with him that you saw he had glossy eyes?

11 A. Never. Like I say, yeah, he arrested me
12 one time, you know, on Petit Larceny, then Grand
13 Larceny. But he harassed me a bunch of times in
14 between there.

15 Like I say, I never seen him with glossy
16 eyes. I never knew him to stumble over his words and
17 repeat hisself, you know, like frequently, like he was
18 doing the night of. So...

19 Q. So give me an example. How did he stumble
20 over his words when he was speaking to you at the PSB?

21 A. Just saying things over and over and
22 pausing, and like just like a drug addict sitting in
23 front of you, like kind of nodding off in a sense,
24 losing his train of thought. You literally just asked
25 me that question. This wasn't a strategic thing like



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MILLER 000141

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2 trying to catch me in a lie. No. It was simple
3 things as far as, you know, "Oh, where do you live
4 at?" Right back to the same question, and pause. And
5 like you are really flustered. He was really stuck.

6 Like I say, I'm from the City of
7 Rochester. You know, I have two uncles who dealt with
8 drug struggles throughout my whole life. You know,
9 I've been in the county jail before. You know, I know
10 the signs of somebody who's on drugs.

11 Q. Did you say anything to Wengert at PSB
12 about that?

13 A. Of course not. What am I going to say to
14 him? You should get some help?

15 Q. Did Wengert testify at the Probable Cause
16 Hearing?

17 A. Yes, he did.

18 Q. Did he appear to be under the influence of
19 drugs at that point?

20 A. To be honest, I don't really recall. It
21 was nothing that stuck out that day. You know, I
22 can't tell you if he had glossy eyes because, you
23 know, we was a distance from each other, but you
24 know...

25 Q. During the Probable Cause Hearing, do you



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2 know if your attorney cross-examined Wengert about
3 whether he was intoxicated on drugs on the night that
4 you were arrested?

5 A. No, he didn't.

6 Q. Okay. Did you say that Wengert testified
7 at your trial too?

8 A. Yes, he did.

9 Q. And was there any -- his testimony at your
10 trial, was there any indication that you picked up on
11 that he was under the influence at that point?

12 A. Whether it comes down to him just, you
13 know, lying through his teeth, you know, I don't know
14 if that is a side effect also, you know. Is that just
15 a bad cop or a drug addict? He lied through all his
16 testimony. So...

17 Q. In your experience with your uncles and
18 the Monroe County Jail, and your other experiences
19 with people high on narcotics, has lying been a sign
20 or symptom in your experience?

21 A. Yeah. Very untruthful, you know.

22 Q. During your trial, did your attorney
23 cross-examine Wengert on whether or not he had used
24 any narcotics or substances before testifying that
25 day?



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